

March 25, 2024

Submitted electronically

Minnesota Senate
Judiciary Committee
95 University Avenue W.
Saint Paul, MN 55155

Re: Support for the Minnesota Voting Rights Act (“MNVRA” or SF 3994 / HF 3527)

Dear Chair Latz and Members of the Judiciary Committee:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to convey our strong support for **SF 3994 / HF 3527**, the Minnesota Voting Rights Act (“MNVRA”).

Founded in 1940 under the leadership of Thurgood Marshall, who would later become the United States Supreme Court’s first Black justice, LDF is America’s premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans.

For more than 80 years, LDF has prioritized its work protecting the right of Black citizens to vote—representing Dr. Martin Luther King, Jr., and other marchers in Selma, Alabama, in 1965, advancing the passage of the federal Voting Rights Act of 1965 (“federal VRA”) and litigating seminal cases interpreting its scope,¹ and working in communities across the nation to strengthen and protect the ability of Black citizens to participate in the political process free from discrimination.

Justice Marshall—who litigated LDF’s watershed victory in *Brown v. Board of Education*,² which set in motion the end of legal apartheid in this country and transformed the direction of American democracy—referred to *Smith v. Allwright*,³ the 1944 case ending whites-only primary elections in Texas, as his most consequential case. He often shared that he held this view because he believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution.

¹ LDF was lead counsel in the landmark 2023 federal VRA case *Allen v. Milligan*, 599 U.S. 1 (2023).

² 347 U.S. 483 (1954).

³ 321 U.S. 649 (1944).

Black voters face the greatest threat of discrimination and disenfranchisement since the Jim Crow era. As many states move to further restrict the franchise,⁴ it is critical that states like Minnesota prioritize bills like the MNVRA to meet the urgent need to protect Black voters and other voters of color from discrimination. LDF worked with partners to successfully advocate for the enactment of the John R. Lewis Voting Rights Act of New York (the New York Voting Rights Act or “NYVRA”) in 2022 and the John R. Lewis Voting Rights Act of Connecticut (the Connecticut Voting Rights Act or “CTVRA”) in 2023. Currently, we are working with robust coalitions of civil and voting rights advocates to advance similar laws here in Minnesota, as well as in Michigan, Maryland, New Jersey, and Florida.⁵

We commend you for considering this critical legislation. The MNVRA will affirm Minnesota’s place as a national leader on voting rights by building on the success of the NYVRA and CTVRA, as well as similar state VRAs that have been enacted in Virginia, Oregon, Washington, and California.⁶

I. Limitations of the Federal Voting Rights Act

Although the individual and collective provisions of the federal VRA have been effective at combatting a wide range of barriers and burdens,⁷ federal courts have weakened some of the federal VRA’s protections in recent years, making it increasingly complex and burdensome for litigants to vindicate their rights under the law. As a result, despite the federal VRA’s importance, voters of color often face significant barriers to participate in the political process and elect candidates of their choice.

A. Minnesota voters are at risk of losing the ability to sue under the federal Voting Rights Act.

The U.S. Court of Appeals for the Eighth Circuit recently held that voters and organizations that represent them can no longer bring lawsuits directly under Section 2 of the federal Voting Rights Act (VRA).⁸ This opinion is binding on seven states,

⁴ Brennan Ctr. for Just. at NYU Sch. of L., *Voting Laws Roundup: 2023 in Review* (Jan. 18, 2024), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review>.

⁵ See LDF, *Minnesota Voting Rights Act*, <https://www.naacpldf.org/case-issue/minnesota-voting-rights-act-mnvra/>; LDF, *Michigan Voting Rights Act*, <https://www.naacpldf.org/michigan-voting-rights-act/>; LDF, *Florida Voting Rights Act*, <https://www.naacpldf.org/case-issue/florida-voting-rights-act/>; LDF, *New Jersey Voting Rights Act*, NJVRANOW (2023), <https://njvra.org/>; LDF, *Maryland Needs Its Own Voting Rights Act* (2023), <https://www.naacpldf.org/case-issue/maryland-voting-rights-act/>.

⁶ See H.B. 1890, 2021 Sess. (Va. 2021), <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB1890>; Ore. Rev. Stat. § 255.400 *et seq.*; Wash. Rev. Code Ann. § 29A.92.900 *et seq.*; Cal. Elec. Code, California Voting Rights Act of 2001, § 14027 (2002); see also *Legislative Proposals to Strengthen the Voting Rights Act*, Hr’g Before the Subcomm. on the Const., C.R. & C.L. of the U.S. House Comm. on the Judiciary, at 2 (Oct. 17, 2019), <https://docs.house.gov/meetings/JU/JU10/20191017/110084/HHRG-116-JU10-Wstate-KousserJ-20191017.pdf> (Test. of Professor J. Morgan Kousser) (noting the “striking success of minorities in using the state-level California Voting Rights Act”).

⁷ Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, Brennan Ctr. for Just. at NYU Sch. of L. (June 30, 2009), <https://www.brennancenter.org/our-work/analysis-opinion/voting-rights-act-legacy-15th-amendment>.

⁸ *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023).

including Minnesota, and exposes Black voters and other voters of color in Minnesota to a heightened threat of racial discrimination in voting.

The Eighth Circuit’s opinion flies in the face of six decades of decisions in hundreds of cases under Section 2 of the federal Voting Rights Act.⁹ Although Minnesota voters may still be able to challenge Section 2 violations under 42 U.S.C. § 1983, which provides an individual the right to sue for civil rights violations, there is limited precedent addressing this alternative approach.¹⁰ In short, these recent rulings leave Minnesota voters vulnerable to further erosion of their rights.

B. Even when the federal Voting Rights Act is available to Minnesota voters, it does not fully address the need for voting rights protections.

The existing federal legislation does not fully address the need for voting rights protections in Minnesota and other states. For nearly 50 years, Section 5 of the federal VRA, the heart of the legislation, protected millions of voters of color from racial discrimination in voting by requiring certain political subdivisions to obtain approval from the federal government *before* implementing a voting change.¹¹ However, in *Shelby County, Alabama v. Holder*, the United States Supreme Court rendered Section 5’s “preclearance” process inoperable by striking down Section 4(b) of the federal VRA, which identified the places where Section 5 applied.¹²

Predictably, the *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b).¹³ This onslaught accelerated after the 2020 election, which saw historic levels of participation by voters of color (albeit with persistent racial turnout gaps).¹⁴ Following that election, in 2021, state lawmakers introduced more than 440 bills with provisions that restrict voting access in 49 states, and 34 such laws were enacted.¹⁵ This wave of harmful legislation shows no signs of abating: In 2023 alone, at least 356 restrictive voting bills were considered by lawmakers in 47 states, and 17 restrictive voting laws were actually enacted.¹⁶

With the exception of states (including Minnesota) covered by the Eighth Circuit’s recent ruling described above, Section 2 of the federal VRA offers a private

⁹ *Arkansas State Conf. NAACP*, 86 F.4th at 1219 (Smith, C.J., dissenting) (“For decades and throughout hundreds of cases a private right of action has been assumed under § 2.”) (internal quotations and citations omitted).

¹⁰ *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 91 F.4th 967, 968 (8th Cir. 2024).

¹¹ 52 U.S.C. § 10304.

¹² *See Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 557 (2013).

¹³ *See* LDF, *Democracy Defended* (Sept. 2, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf; *see also* LDF, *A Primer on Sections 2 and 3(c) of the Voting Rights Act* 1 (Jan. 5, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Sections-2-and-3c-VRA-primer-1.5.21.pdf>.

¹⁴ Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, Brennan Ctr. for Just. at NYU Sch. of L. (Aug. 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election>.

¹⁵ Brennan Ctr. for Just. at NYU Sch. of L., *Voting Laws Roundup: December 2021* (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

¹⁶ Brennan Ctr. for Just. at NYU Sch. of L., *supra* note 5.

right of action to challenge any voting practice or procedure that “results in a denial or abridgment of the right of any citizen of the United States to vote on account of race.”¹⁷ But Section 2 litigation imposes a high bar for plaintiffs. Such cases are expensive and can take years to reach resolution.¹⁸ Section 2 lawsuits generally require multiple expert witnesses for both plaintiffs and defendants.¹⁹ Plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 lawsuits.²⁰ Individual plaintiffs, even when supported by civil rights organizations or private lawyers, often lack the resources and specialized legal expertise to effectively prosecute Section 2 claims.²¹ Moreover, even when voters ultimately prevail in the lawsuits, several unfair elections may be held while the litigation is pending, subjecting voters to irreparable harm.²² Due to these challenges, some potential Section 2 violations are never identified, addressed, or litigated in court.²³

Section 2 claims are also expensive for jurisdictions to defend, regularly costing political subdivisions considerable amounts of taxpayer money. For example, the East Ramapo Central School District in New York State paid its lawyers more than \$7 million for unsuccessfully defending a Section 2 lawsuit brought by the local NAACP branch—and, after the NAACP branch prevailed, was ordered to pay over \$4 million in plaintiffs’ attorneys’ fees and costs as well.²⁴ In *Veasey v. Abbott*, the federal lawsuit in which LDF challenged the State of Texas’s Voter ID law with other civil rights groups and the U.S. Department of Justice (DOJ), the district court and the Fifth Circuit Court of Appeals required Texas to pay more than \$6.7 million toward the non-DOJ plaintiffs’ documented litigation costs.²⁵

Above and beyond its complexity and cost, litigation under Section 2 of the federal VRA simply cannot keep up with the urgency of the political process. Because elections occur frequently, discriminatory electoral maps or practices can harm voters

¹⁷ 52 U.S.C. § 10301.

¹⁸ *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hr’g Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits).

¹⁹ LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation 2* (Feb. 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf>; see also, e.g., Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, Yakima Herald (Aug. 10, 2014), https://www.yakimaherald.com/special_projects/aclu/big-costs-heavy-hitters-in-aclu-suit-against-yakima/article_3cbcce20-ee9d-11e4-bfba-f3e05bd949ca.html.

²⁰ LDF, *supra* note 19, at 2.

²¹ *Voting Rights and Election Administration in the Dakotas: Hr’g Before the Subcomm. on Elections*, 116th Cong. 64 (2019).

²² *Shelby County*, 570 U.S. at 572 (Ginsburg, J., dissenting) (“An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.”).

²³ *Congressional Authority to Protect Voting Rights After Shelby County v. Holder: Hr’g Before the Subcomm. on the Const., C.R. & C.L. of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) (Written Test. of Professor Justin Levitt).

²⁴ Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to \$1: NAACP Leaders Respond*, Rockland County Times (Jan. 21, 2020), <https://www.rocklandtimes.com/2021/01/21/ercsd-threatens-to-fire-teachers-if-legal-fees-not-cut-to-1-naacp-leaders-respond/>; Report and Recommendation, *NAACP, Spring Valley Branch v. East Ramapo Central Sch. Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

²⁵ See Mike Scarcella, *5th Circuit upholds \$6.7 mln in fees for plaintiffs in voting rights case*, Reuters (Sept. 4, 2021), <https://reut.rs/3tN14L7>.

almost immediately after rules are changed. However, on average, Section 2 cases can last two to five years, and unlawful elections often take place before a case can be resolved.²⁶

II. Racial Discrimination in Voting in Minnesota

As set forth in the MNVRA's legislative findings, there is a history of racial discrimination in voting in Minnesota, which included, among other things, a state constitution that limited the right to vote to white residents.²⁷ In addition, evidence of racial discrimination in voting persists in the present day.

Voters of color in Minnesota face substantial racial disparities in voter turnout and voter registration. According to data published by the United States Census Bureau, 84.1 percent of non-Hispanic white citizens in Minnesota were registered to vote as of the November 2020 election, compared to only 79.4 percent of Asian citizens, 74.7 percent of Latino citizens, and 70.5 percent of Black citizens.²⁸ And in the 2020 election, 79.9 percent of non-Hispanic white citizens in Minnesota voted, compared to only 66.1 percent of Black citizens, 64 percent of Asian citizens, and 62.7 percent of Latino citizens in Minnesota voted in that election.²⁹ These disparities strongly indicate the presence of unequal barriers in the registration and voting process that impede participation by eligible Black, Latino, and Asian voters in Minnesota.³⁰

Voters of color also suffer from systemic underrepresentation on county commissions. Based data from a 2020 analysis of the demographic composition of Minnesota's County Commissioners by the Reflective Democracy Campaign, voters of color show signs of potential underrepresentation in 32 counties, where there is a gap between the proportion of people of color within a county's population and the proportion of county commissioners who are people of color that could be addressed if there were at least one additional person of color serving on the commission. Although such descriptive underrepresentation itself is not necessarily unlawful (the relevant metric is the ability of voters of color to elect candidates of choice, regardless of such candidates' race), substantial racial disparities in political participation coupled with signs of systemic underrepresentation are concerning red flags of racial discrimination in voting, and are often associated with racially discriminatory barriers to the franchise, such as insufficient polling places in communities of color that suppress turnout among voters of color, or district maps that crack or pack voters of color to dilute their voting strength. Moreover, in smaller jurisdictions in Minnesota, the

²⁶ *Shelby Cnty*, 570 U.S. at 572 (Ginsburg, J., concurring) ("An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.").

²⁷ MNVRA Sec. 2(a)(2).

²⁸ MNVRA Sec. 2(3)(i).

²⁹ MNVRA Sec. 2(3)(ii).

³⁰ Moreover, recent research indicates that the Census Bureau's statistics on turnout may overestimate the incidence of voting among communities of color, suggesting that racial turnout disparities may be even greater than Census data reveals. See Stephen Ansolabehere, Bernard L. Fraga & Brian F. Schaffner, *The CPS Voting and Registration Supplement Overstates Minority Turnout*, 84 J. of Pol. 1850 (2021), https://static1.squarespace.com/static/5fac72852ca67743c720d6a1/t/5ff8a986c87fc6090567c6d0/1610131850413/CPS_AFS_2021.pdf.

prevalence of at-large election structures—a form of election which, when combined with racially polarized voting or other relevant factors, can “operate to minimize or cancel out the voting strength of racial minorities in the voting population”—raises questions about potential vote dilution that may be going unchallenged at present.³¹

These red flags of racial discrimination in voting in Minnesota are further exacerbated by troubling socioeconomic racial disparities.³² For example, 37% of Black Minnesotans are unemployed, compared to just 19% of white Minnesotans.³³ Fourteen percent of Black Minnesotans suffer from a disability, compared to just 6% of white Minnesotans.³⁴ And 47% of Black Minnesotans live at or near poverty level, compared to just 18% of white Minnesotans.³⁵ As Congress, courts, and academic researchers have recognized, underlying social conditions resulting from past and ongoing discrimination often interact with voting rules to cause or exacerbate disparities in the ability to participate in elections.³⁶ For example, courts have long considered “the effects of discrimination in such areas as education, employment, and health” as relevant to analyzing voting rights violations, because such conditions can “hinder [a minoritized group’s] ability to participate effectively in the political process.”³⁷

III. The MNVRA Codifies, Clarifies, and Simplifies the Protections of Section 2 of the Voting Rights Act into Minnesota Law

The MNVRA will codify, clarify, and simplify the protections of Section 2 of the federal Voting Rights Act into Minnesota law. It will provide efficient, practical ways to identify and resolve barriers to equal participation in local democracy, including both voter suppression and vote dilution. And it will establish procedures to incentivize out-of-court resolution by providing a safe harbor for political subdivisions to voluntarily remedy violations without the risk and expense of litigation. This will ensure that, regardless of how the federal courts construe the federal VRA, Minnesotans will have strong tools to protect themselves from voting discrimination.

These provisions, as discussed in more detail below, are core elements of a comprehensive state VRA.³⁸ We appreciate that the State of Minnesota recently updated its laws regarding two other aspects of LDF’s recommended model state

³¹ *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (internal quotations and brackets omitted).

³² See, e.g., Minnesota State Demographic Ctr., *The Economic Status of Minnesotans 2023* (March 2023), https://mn.gov/admin/assets/Economic%20Status%20of%20Minnesotans%202023_tcm36-569572.pdf.

³³ *Id.* at 37.

³⁴ *Id.* at 43.

³⁵ *Id.* at 50.

³⁶ See, e.g., *Gingles*, 478 U.S. at 44-47.

³⁷ *Id.* at 36-47 (quoting S. Rep. No. 97-417, at 28-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-207); see also, e.g., Justin de Benedectis-Kessner & Maxwell Palmer, *Driving Turnout: The Effect of Car Ownership on Electoral Participation* 4 (Aug. 17, 2021), https://scholar.harvard.edu/files/jdbk/files/drivers_turnout.pdf (“Car access has a substantively large impact on voter turnout.”); Am. Bar Found., *Major Empirical Research Effort Finds Incarceration Suppresses Overall Voter Turnout* (Feb. 25, 2014), <https://www.americanbarfoundation.org/news/467>.

³⁸ See LDF, *State Voting Rights Acts: Building a More Inclusive Democracy*, <https://www.naacpldf.org/ldf-mission/political-participation/state-voting-rights-protect-democracy>.

VRA: language access and voter intimidation.³⁹ We look forward to the opportunity to work with this Committee in a future legislative session to explore additional core state VRA provisions that require funding allocations. These include (1) a “preclearance” program to require political subdivisions with a history of discrimination or other indicia of racial discrimination in voting to obtain pre-approval before making changes to key voting rules or practices; and (2) a statewide election database that supports enforcement and best practices and saves jurisdictions the burden of responding to information requests by centralizing relevant election information. In addition, we encourage the legislature to explore protections for Native voters on tribal lands, modeled after the federal Native American Voting Rights Act.⁴⁰

A. Cause of Action to Address Voter Suppression

Section 4, subd. (1) of the MNVRA provides voters of color, and organizations that represent or serve them, with a private right of action to challenge policies or practices that result in racial disparities in voter participation. The MNVRA codifies into Minnesota law the same protections against voter suppression that have long been covered by Section 2 of the federal Voting Rights Act,⁴¹ but adopts a clarified and streamlined legal standard for these claims.⁴² The legal standard for the MNVRA’s private right of action against vote dilution is based on similar protections against voter suppression that have been adopted in recent years in states including New York⁴³ and Connecticut.⁴⁴

The MNVRA’s protections against voter suppression will enable voters of color to address practices that create barriers to the ballot, including, among other things, inaccessible or insufficient polling locations in communities of color, wrongful voter purges that disproportionately harm voters of color without justification, the holding of local elections on unusual off-cycle dates that disproportionately suppresses turnout among voters of color when compared to on-cycle elections, or improper election administration decisions or equipment allocations that lead to longer lines.⁴⁵

B. Cause of Action to Address Vote Dilution

Section 4, subd. 2 of the MNVRA provides voters of color, and organizations that represent or serve them, with a private right of action to challenge dilutive election structures or district maps, which weaken or drown out Black and brown voters’ voices. The MNVRA codifies into Minnesota law the same protections against racial vote

³⁹ See H.F. 3, 93rd Leg., 24th Sess. L. Chapter (Minn. 2023), <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0003&ssn=0&y=2023>.

⁴⁰ See H.R. 5008, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/5008>.

⁴¹ Section 2 of the federal VRA prohibits political subdivisions from taking action with “the purpose or with the effect of denying or abridging the right to vote on account of race or color.” 52 U.S.C. § 10303.

⁴² MNVRA Sec. 4, Subd. 1. The MNVRA’s legal standard for voter suppression claims rejects recent federal cases interpreting Section 2 that impose severe barriers to plaintiffs seeking to assert voter suppression claims in federal court. See, e.g., *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2330 (2021).

⁴³ NYVRA, N.Y. Elec. L. § 17-206(b).

⁴⁴ CTVRA, Conn. Gen. Stat. § 9-368j(a)(2)(A).

⁴⁵ MNVRA Sec. 4, Subd. 1.

dilution that have long been covered by Section 2 of the federal Voting Rights Act,⁴⁶ but adopts a clarified and streamlined legal standard for these claims.⁴⁷ The legal standard for the MNVRA’s private right of action against vote dilution is based on similar protections against vote dilution that have been adopted in California, Washington, Oregon, Virginia, New York, and Connecticut.⁴⁸

The MNVRA’s vote dilution provision will enable voters of color to contest at-large local elections that dilute minority voting strength.⁴⁹ It will also provide a framework for contesting district-based elections that configure districts in a manner that denies voters of color an equal opportunity to participate in the political process and elect candidates of choice, for instance, through districting plans that crack communities of color into multiple districts or pack voters of color into just one district.⁵⁰

The MNVRA will make vote dilution litigation more predictable, less time-intensive, and less costly than litigation under the federal VRA. This will benefit both voters who seek to vindicate their rights as well as political subdivisions seeking to comply with the law.

C. Presuit Notice and Safe Harbor for Political Subdivisions

Section 6 of the MNVRA contains important “safe harbor” protections for political subdivisions that wish to voluntarily remedy potential violations without litigation.⁵¹ Prospective MNVRA plaintiffs are required to notify political subdivisions in writing of any alleged violation before they can commence any action in court (subject to a few limited exceptions).⁵² Political subdivisions are afforded a “safe harbor” period

⁴⁶ See *Thornburg v. Gingles*, 478 U.S. 30 (1986).

⁴⁷ MNVRA Sec. 4, Subd. 2. Like other state VRAs, the MNVRA’s legal standard draws from federal law interpreting Section 2 by permitting claims to be brought primarily on the basis of racially polarized voting, which has been widely acknowledged by federal courts to be the “linchpin” of Section 2. See, e.g., *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Allen v. Milligan*, 599 U.S. 1 (2023). Numerous federal courts have recognized that “[e]vidence of racially polarized voting is the linchpin of a section 2 vote dilution claim.” See *Westwego Citizens for Better Gov’t v. City of Westwego*, 872 F.2d 1201, 1207 (5th Cir. 1989); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1238 (C.D. Cal. 2002), *aff’d*, 537 U.S. 1100 (2003); *Harding v. Cnty. of Dallas, Texas*, 336 F. Supp. 3d 677, 690 (N.D. Tex. 2018), *aff’d* 948 F.3d 302 (5th Cir. 2020); see also *McMillan v. Escambia Cnty.*, 748 F.2d 1037, 1043 (5th Cir. 1984) (“racially polarized voting will ordinarily be the keystone of a dilution case”). The MNVRA alternatively allows vote dilution claims to be brought on the basis of the totality of circumstances factors, see MNVRA Sec. 5, subd. 1, which are drawn from the Senate Report concerning the 1982 amendments to the federal Voting Rights Act. *Gingles*, 478 U.S. at 43 n.7 (“The 1982 Senate Report is the “authoritative source for legislative intent” in analyzing the amended Section 2”); accord *Milligan*, 599 U.S. at 10, 30 (referencing the Senate Report); *Brnovich v. DNC*, 141 S. Ct. 2321, 2333 (2021) (same).

⁴⁸ See, e.g., NYVRA, N.Y. Elec. Law § 17-206(2)(b)(i); CTVRA, Conn. Gen. Stat. § 9-368j(b).

⁴⁹ MNVRA Sec. 5, Subd. 2.

⁵⁰ *Id.*

⁵¹ MNVRA Sec. 6.

⁵² *Id.*

during which they can adopt a resolution committing to voluntarily remedy the alleged violation.⁵³

This provision incentivizes political subdivisions to resolve violations amicably, collaboratively, and outside of court. Similar notification and safe harbor procedures in other state VRAs have proven highly effective at incentivizing voluntary resolution of potential violations outside of court.⁵⁴

D. Codification of the Democracy Canon

The MNVRA enshrines a “democracy canon” into state law by instructing judges to interpret laws and rules in a pro-voter, pro-democracy way whenever reasonably possible.⁵⁵ This ensures that courts will construe election and voting laws—including the MNVRA—in favor of protecting the rights of voters, ensuring voters of color have equitable access to fully participate in the electoral process.

IV. Equitable Voting Rights Protections Have Concrete Benefits

Robust voting rights protections, like those in the federal VRA and state-level voting rights acts, can have powerful effects in making the democratic process fairer, more equal, and more inclusive. These effects include reducing racial turnout disparities,⁵⁶ making government more responsive to the needs and legislative priorities of communities of color,⁵⁷ and increasing diversity in government office,⁵⁸ so that elected representatives more fully reflect the communities they serve.

There is evidence that measures like the MNVRA can have powerful, downstream benefits in economic equality and health. Recent analyses show that incremental improvements in diversity in local representation translate into more

⁵³ See MNVRA Sec. 6. The political subdivision is afforded 60 days to adopt a resolution affirming its intent to enact a remedy. MNVRA Sec. 6, subd. 1. If the political subdivision adopts such a resolution, it is afforded 90 days to enact and implement the remedy. MNVRA Sec. 6, subd. 2.

⁵⁴ Law. Comm. for C.R. of the S.F. Bay Area, *Voting Rights Barriers & Discrimination In Twenty-First Century California: 2000-2013* 7 (2014), <https://www.reimaginerpe.org/files/Voting-Rights-Barriers-In-21st-Century-Cal-Update.pdf>.

⁵⁵ MNVRA Sec. 3. For more information on the Democracy Canon, see Rick Hasen, *The Democracy Canon*, 62 Stanford L. Rev. 69 (2009), <http://www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/03/Hasen.pdf>.

⁵⁶ Zachary L. Hertz, *Analyzing the Effects of a Switch to By-District Elections in California*, MIT Election Lab (July 19, 2021), https://electionlab.mit.edu/sites/default/files/2021-07/hertz_2020.pdf.

⁵⁷ Sophie Schllit & Jon C. Rogowski, *Race, Representation, and the Voting Rights Act*, 61 Am. J. of Pol. Sci. 513 (July 2017), <https://www.jstor.org/stable/26379507>.

⁵⁸ Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 Urb. Aff. Rev. 731, 757 (2021), https://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/cvra_project.pdf; see Pei-te Lien et al., *The Voting Rights Act and the Election of Nonwhite Officials*, 40 Pol. Sci. & Pol. 489 (July 2007), <https://www.jstor.org/stable/20452002>; Paru R. Shah, Melissa J. Marschall, & Anirudh V. S. Ruhil, *Are We There Yet? The Voting Rights Act and Black Representation on City Councils, 1981-2006*, 75 J. Pol. 993 (Aug. 20, 2013), <https://www.jstor.org/stable/10.1017/s0022381613000972>.

equitable educational and policy outcomes.⁵⁹ Professor Thomas A. LaVeist of Tulane University, in a landmark study, identified the federal VRA as a causal factor in reducing infant mortality in Black communities where the law’s protections had led to fairer representation.⁶⁰ For these reasons, the American Medical Association has recognized voting rights as a social determinant of health and declared support for “measures to facilitate safe and equitable access to voting as a harm-reduction strategy to safeguard public health.”⁶¹ In short, the MNVRA can have significant, potentially transformative benefits for democracy and society in this state.

* * *

LDF, the nation’s oldest and premier civil rights legal organization, is dedicated to the full and equal participation of all people in our democracy, and fully supports the MNVRA. We urge members of the committee to support the inclusion of the MNVRA provisions in the House Elections Policy Bill. If you have any questions, or wish to discuss the Minnesota Voting Rights Act further, please feel free to contact Michael Pernick at (917) 790-3597 or mpernick@naacpldf.org.

Sincerely,

/s/ Michael Pernick

Michael Pernick
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⁵⁹ See, e.g. Vladimir Kogan, Stephane Lavertu, & Zachary Peskowitz, *How Does Minority Political Representation Affect School District Administration and Student Outcomes?*, 65 Am. J. of Pol. Sci. 699 (July 2021), <https://www.jstor.org/stable/45415637> (discussing “evidence that increases in minority representation lead to cumulative achievement gains . . . among minority students”); Brett Fischer, *No Spending Without Representation: School Boards and the Racial Gap in Education Finance*, 15 Am. Econ. J.: Econ. Pol’y 198 (May 2023), <https://www.aeaweb.org/articles?id=10.1257/pol.20200475> (presenting “causal evidence that greater minority representation on school boards translates into greater investment in minority students”).

⁶⁰ Thomas A. LaVeist, *The Political Empowerment and Health Status of African-Americans: Mapping a New Territory*, 97 Am. J. of Socio. 1080 (Jan. 1992), <https://www.jstor.org/stable/2781507>.

⁶¹ Am. Med. Ass’n PolicyFinder, *Support for Safe and Equitable Access to Voting H-440.805* (2022), <https://policysearch.ama-assn.org/policyfinder/detail/voting?uri=%2FAMADoc%2FHOD.xml-h-440.805.xml>; see also Anna K. Hing, *The Right to Vote, The Right to Health: Voter Suppression as a Determinant of Racial Health Disparities*, 12 J. of Health Disparities Rsch. & Prac. 48 (2019), <https://digitalscholarship.unlv.edu/jhdp/vol12/iss6/5>.

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Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voting discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.